IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT petition NO.8497 OF 2006

Khazar University & Ors. ...petitioners
Vs.
Medical Council of India & Ors. ...Respondents

Mr.Hitesh Jain i/b.M/s. A.L.M.T. Legal for petitioners
Ms. Simran Puri for Respondent No.1.
Mr.A.A.Kumbhakoni, Asso.Advocate General with
Mrs. M.P.Thakur, AGP for Respondent No.2
Mr.G.Hariharan with Mr. N.R. Prajapati
i/b. Mr. H.D. Rathod for Respondent No.3

CORAM: SMT.RANJANA DESAI &
SMT.ROSHAN DALVI, JJ.
DATED: 20TH NOVEMBER, 2007

JUDGMENT (Per Smt. Ranjana Desai, J)

1. Petitioner No.1 claims to be the member of the European University Association. According to petitioner 1 it is a University chartered by Government of Azerbaijan.

2. Petitioner 2 claims to be a sub campus of petitioner 1 allegedly established to teach the health and medical science program of petitioner 1 which is stated to be set up under aegis of petitioner 3.

3. In this petition the petitioner has inter alia taken exception to the Medical Council of India's stand that the sub campus agreements permitting part study in India and part study abroad for MBBS Degree is not permissible and therefore, the petitioner has to close down its campus. The petitioner has inter alia sought setting aside of the order dated 21st November, 2006 passed by respondent 2 directing closure of the petitioner's institution situated at Chakan, Talegaon Road, Pune.

4. On 17th September, 2007 the petition was heard by the Division Bench of this Court (S.B.Mhase & D.G. Karnik, JJ.) and following order was passed :

> *" This petition was heard on 14th September 2007 and today for sometime. During the course of arguments some controversy was raised regarding the infrastructure available and the activities carried on at the campus of the petitioner – Institution. Learned counsel for the petitioner and the Associate Advocate General for respondent no.2 suggested that a team of Inspectors may be appointed for the purpose of inspection and submitting a report. Learned Associate Advocate General also submitted a few names of the Professors of the recognised medical colleges or doctors in Government Service, who in the past have carried on inspection on behalf of the Government and who are presently available and will be willing to undertake inspection. He also suggested that a Senior Officer of police be also appointed to enable the team to have the proper access to the record and institution. Accordingly, following three*

persons are appointed for inspection :

(1) Dr. Bijave, Officer on Special Duty, Medical Education Department.

(2) Any other Doctor to be nominated by Mr. Bijave who has experience of inspecting the medical colleges/Government Departments.

(3) Police Officer not below the rank of Superintendent of Police/Dy.Commissioner of Police to be nominated by the Director General of Police.

2. Learned counsel for the petitioner agrees that the petitioner institution would co-operate with the team and give inspection. Accordingly, the aforesaid team shall commence the inspection work within a couple of days, carry on the inspection and submit its report as expeditiously as possible preferably within a week.

3. All concerned to act on authenticated copy of this order."

5. Accordingly inspection was taken by Inspection Committee comprising three doctors and one representative of police department. Inspection Report dated 19th September, 2007 is submitted in the Court.

6. Some important portions of the inspection report need to be quoted. They are as under :

2. Essentiality Certificate : The Government of

Maharashtra has **not** issued essentiality certificate for starting of the Primary medical qualification course at SIMSR, Sudumbare, Pune, Maharashtra, offered by the Khazar University, Baku, Azerbaijan (Europe).

12. Method of selection of candidates: On first-cum-first basis.

13. ... ...

14. Residential Quarters : Not Available.

15. Sports and recreation facilities : Not available.

16. Teaching Hospital : Not available

17. Distribution of beds : Not available

18. Reaching & Other facilities: Not available

19. Clinical Material : Not available

20.Registration and Medical Record Section: Not available.

21. Central Casualty Service: Not available.

22. Clinical Laboratories : Not available.

23. Operation theatre unit : Not available.

24. Intensive care : Not available.

25. Labour room: Not available.

26. Radiological facilities : Not available.

27. Pharmacy: Not available.

28. Central sterilization department: Not available.

29. Central laundry: Not available.

30. Canteen: available for all the Institute students and faculty.

31. Incinerator: Not available.

32. Para medical staff: Not available.

33. Nursing Staff: Not available.

Medical College

1. Anatomy Department: Not available

2. Physiology Department: Not available

3. Biochemistry Department: Not available.

4. Pharmacology Department: Not available.

5. Pathology Department: Not available.

6. Microbiology Department: Not available.

7. Forensic Medicine Department:

8. Community Medicine Department: Not available.

9. Clinical Departments: No Clinical Department was available.

General Remarks

1. ... ...

2. ... ...

II.Responsibilities of the University

a) ... ...

b) ... ...

c) ... ...

d) ... ...

III. Term of Agreement

The agreement shall remain in force until such time that each party gives a notice of minimum one year to opt out. The students already admitted under various programs should never be affected and they should smoothly finish and complete their course with the CAYM Education and Khazar University.

3. ... ...

4. The Institution does not have 25 acres of land required for starting a medical college as per MCI norms.

5. The Institution does not have its own Hospital. The Institution in its broucher claims affiliation of following hospitals:

A. Niramay Hospital, Pimpri Chinchwad.

B. Kamat Hospital, Pimpri Chinchwad.

C. Unik Hospital, Pimpri Chinchwad

D. Pratibha Hospital

Of the above stated hospitals, the first three hospitals have given statement in writing that they are not in any way associated with Siddhart Institute of Medical Sciences & Research (SIMSR).

The Pratibha Hospital could not be traced in Pimpri

Chinchwad area. After enquiry it was revealed that this hospital is located in Satara.

6. Available clinical material is : Nil

Since College does not have any teaching hospital, no clinical material was available.

7. OPD service : Nil

8. Operation Theatres – Not available

9. Labour rooms – Not available

10. ICCU- Not available

11. X Ray machines – Not available

12. Blood Bank – Not available

13. Central Pharmacy, C.S.S.D., mechanized laundry, EPABX, central kitchen – Not available

14. Incinerator – Not available

15. Para medical staff – Not available

16. Lecture theatre – Not available

17. Staff quarters – Not available

18. Nurses and Residents' hotels – Not available

19. ... ...

20. ... ...

21. On the day of inspection it was observed that no infrastructural facilities pertaining to Medical College were available on campus. There was no teaching activity being conducted regarding Medical College on

campus.

22. ... ...

23. No teaching staff except Dean, was available to conduct the teaching programme. Dean has informed that the entire faculty had left the institution after the Police raid in June 2007 (Statement of the Dean attached). The police has registered the offence Registration No.99/2007 IPC- 420, 467, 34 – Talegaon Dabhade Police Station, after the complaint by student who had paid the money in June 2007 i.e. For the academic year 2007-2008, but the receipt was given of the previous year meaning that the admission was shown for the academic year 2006-2007. (Brief note from Police attached). After repeated questioning the President and the Dean stated that no faculty is on the Pay-Roll of the Institution since June 2007.

24. Clause 24 reads as under :-

(a) Faculty :

(i) Professor : Nil

(ii) Associate Professor : Nil

(iii) Assistant Professor : Nil

(iv) Tutor : Nil

(b) Resident :

i) Sr. Resident : Nil

ii) Jr. Resident : Nil

Interaction with the Students:

About 10 students were present in campus on the day of inspection (19th September, 2007). The committee interacted with them in the hostel room. The students did not have any clarity about their future. They confess that there is no teaching activity being conducted since June 2007.

Impression of the Committee :

A. The Institution does not have its own 25 acre land required for establishing the Medical College.

B. The Institution does not have its own 500 bedded Hospital required at the inception.

C. The Institution does not have any teaching faculty.

D. The Institution does not have necessary permissions :

a. Essentiality Certificate:Government of Maharashtra.

b. Letter of Intent – Government of India

c. Letter of Permission – Government of India

E. The mode of admitting student for this program is on first-cum-first basis which is clearly in blatant and violent breach of directions issued by the Hon. Supreme Court as also various Hon. High Courts.

F. The experience of the Committee was more than shocking. On one side to get the MCI recognition one has to fulfill such stringent norms and on the other hand here, there are no norms, no regulatory agency and no law which is governing this activity. We humbly submit that the Hon. High Court may take the appropriate steps to uphold the sanctity of the education and particularly the medical education."

7. After the Inspection report is submitted to the Court the petitioners want to withdraw the petition. Learned Counsel for the petitioner states that the campus is now shifted to Mauritius and hence he has instructions to withdraw the petition. He states that the campus is shifted to Mauritius on 20th September, 2007. Inspection was taken on 18th and 19th September, 2007. It is stated in the report that President of the petitioner had informed members of the Committee on the date of inspection that all the instruments and books have been shifted to Mauritius. It is strange that immediately after the inspection the petitioners should shift the campus to Mauritius. Mr. Kumbhakoni learned Associate Advocate General stated that the State may take appropriate legal action against the petitioners. In view of this statement and since the petitioners want to withdraw

the petition we do not want to comment upon the above conduct of the petitioners.

8. Mr. Kumbhakoni, learned Associate Advocate General further stated that this petition was heard on 3 occasions. Substantial time has been spent by the Court on this petition. As directed by this Court 3 doctors have spent their valuable time in carrying out inspection. He therefore, strongly recommended that the doctors be adequately compensated by directing the petitioners to pay substantial remuneration to them and exemplary costs may also be imposed on the petitioners. We find force in this submission of Mr. Kumbhakoni, learned Associate Advocate General.

9. In the circumstances of the case, having regard to the report submitted by the Committee we direct the petitioners to pay Rs.25000/- to each of the doctors who carried out the inspection as directed by this Court. We also impose exemplary costs of Rs.50,000/- on the petitioners. The said costs be paid to the State forthwith. Cheques drawn in the names of the 3 doctors be deposited in the office of the Associate Advocate General within 4 weeks from today.

10. It will be open to the State to adopt appropriate proceedings against the petitioners.

11. In case the State proceeds against the petitioners it will be open to the petitioners to raise such contentions as may be available to them in law as regards report dated 19th September, 2007.

12. With the above observations and directions the petition is allowed to be withdrawn and is disposed of as such.

(SMT. ROSHAN DALVI, J.) **(SMT.RANJANA DESAI, J.)**